

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, February 28, 2013.

Alan Duke, Chair, called to order the regular meeting of the Frederick County Board of Appeals ("Board") for Thursday, February 28, 2013 at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall. Present were Carole Jaar Sepe, Robert Fenimore, John Capoccia and Mike Bowersox. Also present were Mr. Michael Chomel, County Attorney, and Community Development Division staff Larry Smith, Zoning Administrator, and Craig Terry, Planner.

Official Minutes of the Board of Appeals' meetings are kept on file in the Community Development Division.

Introduction

The Chair requested that all cell phones be turned off.

Approval of Minutes

On a motion from Mr. Bowersox, seconded by Mr. Capoccia, the Board approved the minutes of January 23, 2013 (Yea 5, Nay 0)

Discussions

The Chair requested the Case B-13-03 be heard first. There was no objection from the Board.

B-13-02 Friends of Frederick County Inc., etal c/o The Law Office of Michele Rosenfeld LLC

The appellant's attorney in case B-13-02 requested a continuance to March 7, 2013. The opposing attorney, Mr. Tom Lynch of Miles and Stockbridge representing the Jefferson Park Development LLC and JTPI Development LLC and Ms. Kathy Mitchell, Assistant County Attorney agreed to the postponement.

On a motion from Mr. Bowersox, seconded by Mr. Capoccia, the case was moved to March 7, 2013 at 7PM. (Yea 5, Nay 0)

Rules and Procedures

The Chair stated the rules and procedures for the hearing and swore in all persons who expected to testify at the meeting.

Cases

B-13-03 Jerry L. & Barbara J. Fouche

An application was filed requesting a special exception to establish a Limited Agricultural Activity to allow chickens on a residential property of less than 3 acres in the Residential zoning district, per Ordinance Section 1-19-3.210 and 1-19-8.325, located on Mt. Pleasant Court (7901 Mt. Pleasant Court, Tax Map 59, Parcel 238). Zoned Residential (R-1).

Mr. Terry read the staff report. Mr. Smith read the agencies comments. The board members noted their observations during their scheduled site visit on Wednesday, February 20, 2013.

On a motion from Mr. Bowersox and seconded by Mr. Fenimore, the Board unanimously approved the application as requested based on criteria set forth in Ordinance Sections 1-19-3.210, and 1-19-8.325, with the condition that the farm animals be moved outside of the 50 ft setback.

Mr. Duke announced a brief recess.

Break at 7:41 p.m. The hearing resumed at 7:52 p.m.

The Chair swore in all persons who expected to testify at the hearing.

Mr. Terry read the staff report. Mr. Smith read the agencies comments. The Board members noted their observations during their scheduled site visit on Wednesday, February 20, 2013.

The Chair announced that the alternate Board member, Mr. Brad Dyjak was present at the hearing and had visited the site.

B-13-01 Sugarloaf Citizens Association Inc., etal c/o The Law Office of Michele Rosenfeld LLC

The Board heard statements from Mr. Danny O'Connor and Mr. Dave Severn of Severn, O'Connor and Kresslein representing the Applicant in opposition to the evidence being presented to the Board. Objection was raised to the introduction of non-relevant materials and grounds of the Appeal and that the review of the septic field is not within the purview of the Board of Zoning Appeals. The attorneys in addition objected to the Appellant's opposition filing of the compatibility of the site plan per Section 1-19-3.300.4(A) of the current zoning Ordinance. The Applicants raised the issue that the site plan was filed in 2008 and that the 2008 ordinance continues to apply.

Ms. Rosenfeld requested that the Board kept the file open so the Appellant could respond to the Applicants objections. Ms. Rosenfeld further requested that they hear the testimony and allow an opportunity on behalf of the Appellants to return for oral arguments on the issues raised.

Ms. Mitchell, County Assistant Attorney representing the Planning Commission in this case, clarified that the Board should abide by the Opinion from Judge Dwyer in the previous court case on the original site plan dated March 10, 2011. Ms. Mitchell indicated that it was clear in the Opinion, that the Board of Appeals cannot supersede the Health department, and that the ordinance in effect is the 2008 Ordinance.

Break at 8:32 p.m. The hearing resumed at 8:42 p.m.

Mr. Chomel provided the Board with several courses of action to proceed.

Mr. Soter testified that the site plan was filed in 2008 and submitted revisions were considered to be part of the original site plan.

The Board discussed the options and whether to hear the case.

Mr. Fenimore moved to separate the case into two motions, which was seconded by Mr. Bowersox. (Yea 5-0)

On a motion from Mr. Fenimore seconded by Mr. Bowersox, and clarified by the Chair, the Board denied the appeal because the Board of Appeals does not have jurisdiction over determinations of the health department. (Yea 4, Nay 1 – Sepe Opposed)

On a motion from Mr. Capoccia, clarified by the Chair and rephrased by Mr. Chomel, then seconded by Mr. Bowersox, the Board dismissed the appeal on the basis that the applicable zoning ordinance to this site plan was the ordinance in effect in 2008 when the site plan was filed and, that the appeal was erroneously based on the 2009 zoning ordinance which recognized that it only applied to site plans filed after his effective date. (Yea 3, Nay 2 – Sepe and Fenimore opposed)

Closing

Being no further business, the meeting adjourned at 9:50 p.m.

Respectfully submitted,

Carole Jaar Sepe,
Recording Secretary

/s/
Alan Duke, Chair